



OHMVR COMMISSION MEETING El Dorado County Board of Supervisors Chambers

September 15, 2012

STAFF REPORT: DMV Specialized License Plate Program

STAFF: Tom Bernardo

SUBJECT: History of DMV Specialized License Program and Current status

Summary

The Department of Motor Vehicles (DMV) has for many years offered license plates with personalized messages as well as specialized license plates issued to advertise a cause or entity and gather funds for the special interest. Specialized license plates are no longer available to individual causes or private groups, but state agencies can apply for an agency-sponsored specialized license plate and it shall contain a message that publicizes or promotes a state agency, or the official policy, mission or work of a state agency. The OHMVR Division qualifies as an “agency” in AB 84 to apply for a specialized license plate. Whether the department would support such an action would have to be determined.

Discussion

A Federal Judge in Sacramento on September 5, 2003, ordered the California State Department of Motor Vehicles to stop issuing new types of specialty license plates after the state legislature refused to allow a plate that said “Choose Life,” said the September 6 San Francisco Chronicle. Motorists may order specialty plates at an initial cost of \$50 and for \$40 a year, half of which goes to benefit a charity or cause. While most specialty plates benefit government organizations, private groups may receive approval for such plates if they can find 7,500 motorists who can apply in advance for the plates. The only private group to date which has received legislative approval for the plates is the Yosemite Fund. Others have applied, but were unable to garner the necessary number of contributors.

In turning down the request for plates by the pro-life Women’s Resource Network, the state legislature displayed its “unbridled authority ... to suppress (an applicant’s) point of view,” said Federal Judge Garland Burrell. The legislature has to change its process for approving requests for plates, he said.

The first category of specialized license plate is the **Special Interest License Plate**. CVC 5060.1 (1-1-2007) prohibits any 501(c) (3) from applying for a new **Special Interest License Plate** (CVC 5060). The current plates: Yosemite, CA Memorial, Coastal Commission, Veterans Organization, Olympic Training Center, Collegiate, Have a Heart Be a Star Help Our Kids, Arts Plate, and the Lake Tahoe Conservancy are all examples of **Special Interest License Plates**. Some are currently available, some are closed. A portion of the revenue from these plates goes back into the organization and some goes into the **Environmental License Plate Fund**.

The second classification of license plate is the **Environmental License Plate** (CVC 5100). Remember the **Special Interest License Plates** are not Environmental License Plates. Environmental License Plates include CA Firefighter, Pearl Harbor, Legion of Valor, Former POW, Medal of Honor, Purple Heart and Bicentennial. Some are currently available, some are closed. Some of these plates just recognize a person and the revenue goes to DMV to run the program; others of these plates produce revenue for a specific organization related to the plate owner. These plates are created by legislation and excess revenue collected goes to the specific organization.

*Please note that the **Environmental License Plate** revenue does not go into the **Environmental License Plate Fund**.*

The third and last category of license plate is the **Specialized License Plate** (CVC 5151). This is where a state agency applies for a special license plate and the plate "shall have a design or contain a message that publicizes or promotes a state agency, or the official policy, mission, or work of a state agency." The design and message is very limited in size as opposed to the above plates that have a whole plate to design. This category was added January 1, 2007, when the legislature banned the **Special Interest License Plate**.

Once an agency has applied for a plate, the agency has 12 months to sell 7,500 plates. DMV can extend that period for an additional 12 months, but the agency has to notify all of the applicants who purchased plates in the first 12 months, and give them the chance to opt out as part of the extension. Also, if the number of plates issued falls below 7,500 at any time, DMV will give the agency one year to get the number over 7,500 and if the agency fails to do so DMV will no longer issue or replace the plates except for those already in the program. Motorcycle plates can also be issued by this program.

Since January 1, 2007 only two **Specialized License Plates** have been issued and special legislation exempted the Department of Veterans Affairs from the 7,500 minimum number of plates to be pre-sold before the plate can be issued. This is the Gold Star Family license plate for family members of those killed in the line of duty while in the armed forces. To further complicate the issue, an agency can apply under the **Specialized License Plate Program** to have these plates issued as environmental license plates.

In 2010 the Department of Food and Agriculture applied to DMV to issue an agency plate and has successfully sold the 7,500 minimum orders. This plate will be issued

starting in March, 2013. An excellent web page detailing the CDFD license plate program can be viewed at:

<https://secure.cdfa.ca.gov/egov/calagplate/>

Commission Action

To be determined

Attachments

Assembly Bill 84 (prohibits DMV participation in specialized license plate program and establishes a new program for state agencies)

Senate Transportation and Housing Committee Report 2007-2008 Session

Assembly Bill No. 84

CHAPTER 454

An act to add Section 5060.1 to, and to add Article 8.6 (commencing with Section 5151) to Chapter 1 of Division 1 of, the Vehicle Code, relating to vehicles.

[Approved by Governor September 25, 2006. Filed with
Secretary of State September 25, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

AB 84, Leslie. Vehicles: specialized license plates.

Existing law requires the Department of Motor Vehicles to issue certain special interest license plates, including specific special environmental design license plates, in accordance with a specified procedure. Existing law requires, before special interest license plates may be issued, at least 7,500 applications for the special interest license plates to be received by the department.

This bill would prohibit the department from accepting an application for participation in a special interest license plate program and from issuing license plates for a new special interest license plate program.

The bill would establish a new specialized license plate program that would require the issuance of those license plates to have a design or contain a message that publicizes or promotes a state agency, as defined, or the official policy, mission, or work of a state agency. The bill would subject the issuance of those license plates to requirements, similar to certain of the requirements in current law governing special interest license plates. The bill would prohibit the department from issuing specialized license plates for state vehicles that are exempt from paying registration fees. The bill would require the department, after deducting its administrative costs under these provisions, to deposit the additional revenue derived from the issuance, renewal, transfer, and substitution of the specialized license plates in the Specialized License Plate Fund, which the bill would establish in the State Treasury. Upon appropriation by the Legislature, the moneys in that fund would be allocated to each sponsoring agency, in proportion to the amount in the fund that is attributable to the agency's specialized license plate program. The bill would also require the sponsoring agency to expend all funds received under these provisions exclusively for projects and programs that promote the state agency's official policy, mission, or work, except as specified, and would penalize the sponsoring agency that does not comply with those requirements.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) The United States District Court for the Eastern District of California in *The Women’s Resource Network v. Steven Gourley* (2004) 305 F. Supp. 2d 1145 permanently enjoined the Director of the California Department of Motor Vehicles from issuing any new special interest license plate to private, nonprofit organizations under the current provisions of Section 5060 of the California Vehicle Code, unless the state establishes “neutral criteria to insure that the [plate] licensing decision is not based on the content or viewpoint of the speech being considered.”

(b) The court did not enjoin the Director of the Department of Motor Vehicles from issuing a special interest license plate that is government speech that promotes California’s state policies.

(c) This bill intends to clarify the framework for specialized license plates that contain only government speech, leaving the issue of special interest license plates designed for the benefit of private entities to other legislation.

(d) Revenue generated from special license plate programs provides a positive way to supplement funding for important governmental programs without cost to the General Fund or an increase in taxes.

SEC. 2. Section 5060.1 is added to the Vehicle Code, to read:

5060.1. Notwithstanding Section 5060 or any other provision of law to the contrary, the department shall not accept an application for participation in a special interest license plate program under Section 5060 and shall not issue, under Section 5060, special interest license plates for a new program.

SEC. 3. Article 8.6 (commencing with Section 5151) is added to Chapter 1 of Division 1 of the Vehicle Code, to read:

Article 8.6. Specialized License Plates

5151. (a) As used in this article, “state agency” means a state office, officer, department, division, bureau, board, or commission, or any other state body or agency.

(b) It is the intent of the Legislature that this article contain the authority for specialized license plates for state agencies.

5152. A person described in Section 5101 may apply for a specialized license plate under this article, in lieu of regular license plates.

5154. Specialized license plates issued under this article shall have a design or contain a message that publicizes or promotes a state agency, or the official policy, mission, or work of a state agency.

5155. The design criteria for a specialized license plate are as follows:

(a) The license plate for a passenger vehicle, commercial vehicle, or trailer shall provide a space not larger than two inches by three inches to the left of the numerical series and a space not larger than five-eighths of

an inch in height below the numerical series for a distinctive design, decal, or descriptive message as authorized by this article. The license plates shall be issued in sequential numerical order or, pursuant to Section 5103, in a combination of numbers or letters.

(b) Specialized license plates authorized under this article may be issued for use on a motorcycle. That license plate shall contain a five-digit configuration issued in sequential numerical order or, pursuant to Section 5103, in a combination of numbers or letters. There shall be a space to the left of the numerical series for a distinctive design or decal and the characters shall contrast sharply with the uniform background color. A motorcycle plate containing a full plate graphic design is not authorized.

(c) Specialized license plates may be issued as environmental license plates, as defined in Section 5103.

5156. (a) (1) A state agency may apply to the department to sponsor a specialized license plate program, and the department shall issue specialized license plates for that program, if the agency complies with all of the requirements of this article.

(2) The department shall not issue specialized license plates to a state agency for a vehicle that is exempt from the payment of registration fees pursuant to Section 9101 or 9103.

(b) The department shall not establish a specialized license plate program for an agency until the department has received not less than 7,500 applications for that agency's specialized license plates. The agency shall collect and hold applications for the plates. Once the agency has received at least 7,500 applications, it shall submit the applications, along with the necessary fees, to the department. The department shall not issue a specialized license plate until the agency has received and submitted to the department not less than 7,500 applications for that particular specialized license plate within the time period prescribed in this section. Advance payment to the department by the agency representing the department's estimated or actual administrative costs associated with the issuance of a particular specialized license plate shall not constitute compliance with this requirement. The agency shall have 12 months, following the date of approval of the agency's initial application to sponsor a specialized license plate program, to receive the required number of applications. If, after that 12 months, 7,500 applications have not been received, the agency shall immediately do either of the following:

(1) Refund to all applicants all fees or deposits that have been collected.

(2) Contact the department to indicate the agency's intent to undertake collection of additional applications and fees or deposits for an additional period, not to exceed 12 months, in order to obtain the minimum 7,500 applications. If the agency elects to exercise the option under this subparagraph, it shall contact each applicant who has submitted an application with the appropriate fees or deposits to determine if the applicant wishes a refund of fees or deposits or requests the continuance of the holding of the application and fees or deposits until that time that the agency has received 7,500 applications. The agency shall refund the fees

or deposits to an applicant so requesting. The agency shall not collect and hold applications for a period exceeding 24 months following the date of approval of the agency's initial application to sponsor a specialized license plate program.

(c) (1) If the number of outstanding and valid specialized license plates in a particular program provided for in this article is less than 7,500, the department shall notify the sponsoring agency of that fact and shall inform the agency that if that number is less than 7,500 one year from the date of that notification, the department will no longer issue or replace those specialized license plates.

(2) Those particular specialized license plates that were issued prior to the discontinuation provided by paragraph (1) may continue to be used and attached to the vehicle for which they were issued and may be renewed, retained, or transferred pursuant to this code.

5157. (a) In addition to the regular fees for an original registration or renewal of registration, the following additional fees shall be paid for the issuance, renewal, or transfer of the specialized license plates:

(1) For the original issuance of the plates, fifty dollars (\$50).

(2) For a renewal of registration with the plates, forty dollars (\$40).

(3) For transfer of the plates to another vehicle, fifteen dollars (\$15).

(4) For each substitute replacement plate, thirty-five dollars (\$35).

(5) In addition, for the issuance of environmental license plates, as defined in Section 5103, with a specialized license plate design, the additional fees prescribed in Sections 5106 and 5108. The additional fees prescribed in Sections 5106 and 5108 shall be deposited in the California Environmental License Plate Fund.

(b) Except as provided in paragraph (5) of subdivision (a), and after deducting its administrative costs under this section, the department shall deposit the additional revenue derived from the issuance, renewal, transfer, and substitution of the specialized license plates in the Specialized License Plate Fund, which is hereby established in the State Treasury. Upon appropriation by the Legislature, the moneys in that fund shall be allocated to each sponsoring agency, in proportion to the amount in the fund that is attributable to the agency's specialized license plate program. Except as authorized under Section 5159, the sponsoring agency shall expend all funds received under this section exclusively for projects and programs that promote the state agency's official policy, mission, or work.

5158. When payment of renewal fees is not required as specified in Section 4000, or when a person determines to retain the specialized license plate upon a sale, trade, or other release of the vehicle upon which the plate has been displayed, the person shall notify the department and the person may retain and use the plate as authorized by departmental regulations.

5159. A state agency that is eligible to participate in a specialized license plate program pursuant to this article and receives funds from the additional fees collected from the sale of specialized plates shall not expend annually more than 25 percent of those funds on administrative

costs, marketing, or other promotional activities associated with encouraging application for, or renewal of, the specialized plates.

5160. (a) A state agency authorized under this article to offer specialized license plates shall prepare and submit an annual accounting report to the department by June 30. The report shall include an accounting of all revenues and expenditures associated with the specialized license plate program.

(b) If a state agency submits a report pursuant to subdivision (a) indicating that the agency violated the expenditure restriction set forth in Section 5159, the department shall immediately cease depositing fees for that agency's specialized license plate program in the Specialized License Plate Fund established under Section 5157 and, instead, shall deposit those fees that would have otherwise been deposited in that fund in a separate fund created by the Controller, which fund is subject to appropriation by the Legislature. The department shall immediately notify the agency of this course of action. The depositing of funds in the account established pursuant to this paragraph shall continue until the agency demonstrates to the satisfaction of the department that the agency is in compliance or will comply with the requirements of Section 5159. If one year from the date that the agency receives the notice described in this paragraph, the agency is still unable to satisfactorily demonstrate to the department that it is in compliance or will comply with the requirements of Section 5159, the department shall no longer issue or replace those specialized license plates associated with that agency. Those particular specialized license plates that were issued prior to the discontinuation provided by this subdivision may continue to be used and attached to the vehicle for which they were issued and may be renewed, retained, or transferred pursuant to this code.

(c) Upon receiving the reports required under subdivision (a), notwithstanding Section 7550.5 of the Government Code, the department shall prepare and transmit an annual consolidated report to the Legislature containing the revenue and expenditure data.

SEC. 4. (a) If Senate Bill 651 is not enacted during the 2005–06 Regular Session, or is enacted during that session but does not establish a special interest license plate program, Sections 2 and 3 of this act shall become operative on the effective date of this act.

(b) If Senate Bill 651 is enacted during the 2005–06 Regular Session and establishes a special interest license plate program, Sections 2 and 3 of this act shall not become operative, except as required under subdivision (c).

(c) If Senate Bill 651 is enacted during the 2005–06 Regular Session and establishes a special interest license plate program, but that program is later held to be unconstitutional, or is otherwise rendered inoperative, by the final judgment of a court of competent jurisdiction, Sections 2 and 3 of this act shall become operative on the effective date of that judgment.

SENATE TRANSPORTATION AND HOUSING COMMITTEE
SENATOR ALAN LOWENTHAL, CHAIRMAN
2007-2008 Session

Committee Policy On: SPECIAL INTEREST LICENSE PLATE BILLS

Recommend Policy: The Committee will not consider any measure that would authorize the issuance of a special interest license plate bearing unique graphics or insignia, or identifying a particular group affiliation or fundraising effort.

Discussion: The number and type of license plates issued by the Department of Motor Vehicles have increased significantly since 1937 when DMV developed the vehicle license plate identification system. Currently over 50 different plate types are authorized for issuance to motorists in California. These include plates for various vehicles types as well as recognition of various groups, including prisoners of war, Pearl Harbor survivors, disabled veterans, etc. It also includes various special interest groups' plates. These groups persuaded the Legislature to authorize the issuance of special interest license plates to identify their particular affiliations or fund their individual causes, resulting in a proliferation of license plate types in use in the state.

The Senate at one time instituted a blanket moratorium on new license plate types in light of the issue of plate proliferation. The Legislature, however, made a limited number of exceptions authorizing in statute additional special license plates for private entities. DMV issued few of these authorized plates, because the law (Vehicle Code Section 5060) requires DMV to receive 7,500 paid application prior to issuance.

In 2004, the federal district court ruled in Women's Resource Network v. Gourley, E.D. Cal.2004, F.Supp.2d, 2004 U.S. Dist., that the special interest license plate program is unconstitutional, because it violates the First Amendment to the U.S. Constitution. The court objected to the Legislature "picking and choosing" private organizations to sponsor license plates. Specifically, it ruled the following:

(California Vehicle Code) Section 5060 grants California legislators unconstitutional, unfettered discretion to deny a private nonprofit organization's request for an enabling statute authorizing issuance of a plate. This aspect of the forum is facially unconstitutional under the First Amendment because no standard governs the decision who may speak. The First Amendment does not allow the government to use a standardless forum to select private speakers because the government may use such a forum to present views it finds acceptable while denying access to those "wishing to express less favored or more controversial views." Therefore, the Director of the California Department of Motor

Vehicles is permanently enjoined from approving any new special interest license plates under the scheme prescribed in Sec. 5060 for private non-profit organizations.

Last year, to address this ruling, the Legislature passed AB 84 (Leslie), Chapter 454, which addresses the lawsuit in part by allowing state agencies to sponsor a special interest license plates to promote and fund state programs. In this way, the license plate program is not a forum for private speech, but rather a forum only for government speech that promotes government programs.

It is worth noting that DMV continues to issue the special interest license plates that existed prior to the lawsuit. There are 10 of these plates.

The committee's policy on special interest license plates is designed to comply with the United State Constitution and thus avoid additional litigation on the subject.